

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STEVEN ANTHONY HAAG,

Petitioner,

v.

ROBERT LeGRAND, et al.,

Respondents.

Case No. 3:12-cv-00594-MMD-WGC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. Plaintiff has paid the \$5.00 filing fee for this action. (ECF No. 1).

The petition in the instant action challenges petitioner's state conviction in Nevada state case number 03CR1520. Petitioner previously challenged this same conviction in this Court, filed under case number 3:07-00132-RCJ-RAM. The petition in case number 3:07-00132-RCJ-RAM was reviewed on the merits and denied by order filed March 4, 2010. (Dkt. no. 45.) Judgment was entered on March 8, 2010. (Dkt. no. 46.) Petitioner appealed. (Dkt. no. 47.) On March 9, 2011, the United States Court of Appeals for the Ninth Circuit denied petitioner a certificate of appealability. (Dkt. no. 51.)

"Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(3)(A). The instant petition is a successive petition, which requires petitioner to seek and obtain

1 leave of the Ninth Circuit Court of Appeal to pursue. See 28 U.S.C. § 2244(b)(3) *et seq.*
2 In the prior habeas case in which petitioner challenged his conviction (case number
3 3:07-00132-RCJ-RAM), the Court reviewed the merits of the petition and denied the
4 petition by order filed March 4, 2010. (ECF No. 45). Because the prior habeas corpus
5 petition was decided on the merits, the instant habeas petition is a successive petition.
6 *McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009). Petitioner has not presented this
7 Court with proof that he has obtained leave to file a successive petition from the Ninth
8 Circuit Court of Appeals. Therefore, the instant petition will be dismissed as successive.

9 In order to proceed with any appeal, petitioner must receive a certificate of
10 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v.*
11 *Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); see also *United States v. Mikels*, 236
12 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial
13 showing of the denial of a constitutional right” to warrant a certificate of appealability.
14 *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The
15 petitioner must demonstrate that reasonable jurists would find the district court’s
16 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529
17 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of
18 demonstrating that the issues are debatable among jurists of reason; that a court could
19 resolve the issues differently; or that the questions are adequate to deserve
20 encouragement to proceed further. *Id.*

21 Pursuant to the December 1, 2009, amendment to Rule 11 of the Rules
22 Governing Section 2254 and 2255 Cases, district courts are required to rule on the
23 certificate of appealability in the order disposing of a proceeding adversely to the
24 petitioner or movant, rather than waiting for a notice of appeal and request for certificate
25 of appealability to be filed. Rule 11(a). This Court has considered the issues raised by
26 petitioner, with respect to whether they satisfy the standard for issuance of a certificate
27 of appealability, and determines that none meet that standard. The Court will therefore
28 deny petitioner a certificate of appealability.

1 IT IS THEREFORE ORDERED that this action is DISMISSED as a successive
2 petition.


3 IT IS FURTHER ORDERED that petitioner's motion to proceed *in forma pauperis*
4 (dkt. no. 2) is DENIED as moot.

5 IT IS FURTHER ORDERED that petitioner's motion for a copy of the docket
6 sheet in this action (dkt. no. 3) is GRANTED. The Clerk of Court shall send plaintiff a
7 printout of the CM/ECF docket in this case.

8 IT IS FURTHER ORDERED that petitioner is DENIED a certificate of
9 appealability.

10 IT IS FURTHER ORDERED that the Clerk shall enter judgment accordingly.

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12 DATED THIS 14th day of May 2013.

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16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
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